

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

DANAVON HORN,

Plaintiff and Appellant,

v.

MELBA HORN, as Cotrustee, etc.,

Defendant and Appellant;

GARY HORN et al.,

Objectors and Respondents.

E053148

(Super.Ct.No. INP10000535)

OPINION

APPEAL from the Superior Court of Riverside County. Harold W. Hopp, Judge.
Affirmed.

Jackson, DeMarco, Tidus & Peckenpaugh, M. Alim Malik, Edward A. Galloway
and Michael J. Fairchild; Oldman, Cooley, Sallus, Gold, Birnberg & Coleman, Marc L.
Sallus and Justin Gold for Plaintiff and Appellant.

Thompson & Colegate, Robert B. Swortwood, Lisa M. Killingbeck, and Susan K. Brennecke, for Defendant and Appellant.

Nethery & Ofseyer and D. Martin Nethery for Objectors and Respondents.

I. INTRODUCTION

Plaintiff Danavon Horn¹ appeals from the judgment dismissing his action to remove his mother, defendant Melba Horn, as cotrustee of a family trust. Danavon contends the trial court erred in dismissing the action on the basis it lacked subject matter jurisdiction. Melba and objectors Gary Horn and Lonna Horn contend the trial court properly dismissed the action under forum non conveniens principles. Melba also appeals, contending the trial court erred in finding it had personal jurisdiction over her. Although we disagree with the basis for the trial court's ruling, we nonetheless affirm the judgment on the ground of lack of personal jurisdiction.

II. FACTS AND PROCEDURAL BACKGROUND

Melba is currently 89 years old; she was married for decades to Dana Horn, who died in November 2010 at the age of 92. Danavon, Gary, and Lonna are their children.

Dana and Melba amassed assets totaling tens of millions of dollars. In July 1974, while they were living in California, they entered into a revocable trust, the DBH Trust (the Trust), which was subsequently restated and amended several times. Dana and

¹ Because many of the parties share a last name, we refer to them by their first names for clarity and convenience, and not intending any disrespect.

Melba were the trustees and beneficiaries, and their children and grandchildren were designated as remainder beneficiaries.

In January 2010, Melba and Dana added Danavon as cotrustee of the Trust. In May 2010, Dana became disabled and moved to a care facility. Melba and Dana's 2008 and 2009 federal tax returns indicated they were residents of Texas.

On September 15, 2010, Melba executed documents revoking the Trust. The Trust agreement provides: "Trust may be revoked, in whole or in part, by an instrument in writing signed by either Dana or Melba and delivered to the Trustees and the other Settlor." Before executing the revocation, Melba underwent a mental status evaluation; her physician found her to be of sound mind, capable of understanding the ramifications of the revocation and of making her own decisions about her finances and health concerns.

On September 22, 2010, Danavon filed a petition in the Riverside County Superior Court seeking an order removing or suspending Dana and Melba as cotrustees of the Trust and appointing Farmers and Merchants Bank as successor cotrustee on the grounds that Dana had become incompetent and Melba was the subject of undue influence regarding Trust assets, such that she was incapable of fulfilling her duties as a trustee.

On September 28, 2010, Danavon filed an ex parte application for a temporary restraining order to freeze the assets of the trust and to suspend Melba's powers as trustee. Gary and Lonna, as beneficiaries of the Trust, filed an objection to the proceedings. Through her counsel, Melba specially appeared at the ex parte hearing and

argued that she had not been personally served and Danavon had no standing because the trust had been revoked. The trial court ordered the hearing continued, and the parties stipulated that “all transactions on the Trust including the effectiveness of any purported revocations are stayed pending hearing” and “assets are frozen where they are.”

Following additional briefing on the issues of subject matter and personal jurisdiction, the trial court issued a temporary restraining order freezing the assets of the Trust until the preliminary injunction hearing and allowing Melba to pay expenses of the Trust only with Danavon’s consent.

At the preliminary injunction hearing, Melba specially appeared and testified that in 1997, she and Dana moved from California to Arkansas, and in 2003, they moved to Texas. In 2010, Melba resided in her home (an asset of the Trust) in Texarkana, and Dana resided in a care facility in Texas.

Since 2003, Melba had signed all trust checks in Texas. She sometimes conferred with legal and financial counsel located in California; those communications took place by telephone or mail from her home in Texas. The certified public accountant for the Trust traveled from California to Texas when she needed to meet with Melba and Dana in person.

Melba’s primary residence, owned by the Trust, is in Texarkana, Texas. The Trust owns a 21,000-acre hunting club, a 1,200-acre farm, and a 350-acre woodland in Arkansas. The Trust also owns two residential properties, an apartment complex, an office building, and a vacant lot in California. Some of the Trust’s bank accounts are in

Texas, and others are in California. Before attending the hearing, Melba had not set foot in California since 2005 (according to her trial testimony) or 2007 (according to a declaration she filed).

Melba testified that after Danavon was appointed a cotrustee, he began to make demands on her, her attorney, and her accountants concerning affairs of the Trust. He threatened to fire her long-time advisers. Melba testified the president of Farmers and Merchants Bank told her she would have to have Danavon's permission to write checks on Trust accounts. Melba thereafter instituted proceedings in Texas against Farmers and Merchants Bank.

In August 2010, Danavon went to Melba's home in Texarkana and told her he was going to take possession of all the Trust records, as well as the computers on which some of the records were stored. Melba asked Barbara Shelton and her son Gary to move the records.

Melba testified she made her own decisions. Lonna and Gary "may tell me what they think, but I discard it, if I don't agree with them. Because I am going to make my own decisions. I am not going to let anybody else do that. No way." She testified that she was "not bashful" and she thought she was "very competent to handle [the affairs of the Trust]." She testified she had not talked to Gary or Lonna about revoking the trust.

Following the hearing, the trial court found that (1) it had personal jurisdiction over Melba; (2) the principal place of administration of the Trust was in Texarkana,

Texas; and (3) it lacked subject matter jurisdiction over the Trust. The trial court denied the preliminary injunction and dissolved the temporary restraining order.²

On October 27, 2010, Melba filed a motion to quash service of summons on the ground that the California court lacked personal jurisdiction over her.

The court set an order to show cause hearing regarding dismissal of the petition. The parties filed additional briefs on the issue of subject matter jurisdiction. The trial court found that the principal place of administration of the Trust was in Texas; the petition related to issues concerning the Trust as a whole, not to specific property owned by the Trust in California, and a California court's exercise of jurisdiction over the issues would unduly interfere with the jurisdiction of Texas, which had primary jurisdiction over the administration of the Trust. The trial court entered an order dismissing the case.

Additional facts are set forth in the discussion of the issues to which they pertain.

III. DISCUSSION

A. Subject Matter Jurisdiction

Danavon contends the trial court erred in dismissing his petition for lack of subject matter jurisdiction.³

² We observe that the trial court “ma[de] no finding on the effect of the purported revocation” of the Trust, and on appeal, the parties have not briefed any issue concerning the revocation. We likewise do not address the issue.

³ Although the trial court's order indicated the action was dismissed on the ground of lack of subject matter jurisdiction, the authority the trial court relied on, and the trial court's reasoning, indicate that the actual basis for the dismissal was an application of the forum non conveniens doctrine. We will analyze the issue accordingly.

1. Standard of Review

The plaintiff has the burden of establishing the facts of jurisdiction by a preponderance of the evidence (*Futuresat Industries, Inc. v. Superior Court* (1992) 3 Cal.App.4th 155, 159), and we review the trial court’s factual findings under the substantial evidence standard (*Winograd v. American Broadcasting Co.* (1998) 68 Cal.App.4th 624, 632). We accord substantial deference to the trial court’s decision to stay or dismiss an action based on forum non conveniens, and we review that decision under the abuse of discretion standard. (*Roman v. Liberty University, Inc.* (2008) 162 Cal.App.4th 670, 682 [Fourth Dist., Div. Two].)

2. Analysis

Probate Code section 17000, which sets forth the subject matter jurisdiction of the probate court, provides: “The superior court having jurisdiction over the trust pursuant to this part [Probate Code sections 17000-17457] has exclusive jurisdiction of proceedings concerning the internal affairs of trusts.” Proceedings concerning the internal affairs of trusts include “[s]ettling the accounts and passing upon the acts of the trustee, including the exercise of discretionary powers” and “[a]ppointing or removing a trustee.” (Prob. Code, § 17200, subd. (b)(5), (10); see also *David v. Hermann* (2005) 129 Cal.App.4th 672, 682-683 [under Prob. Code, § 17200, subd. (b)(3), superior court had subject matter jurisdiction over petition challenging validity of living trust based on alleged undue influence, fraud, or lack of capacity of trustor].)

However, “[w]hen a court upon motion of a party or its own motion finds that in the interest of substantial justice an action should be heard in a forum outside this state, the court shall stay or dismiss the action in whole or in part on any conditions that may be just.” (Code Civ. Proc., § 410.30, subd. (a).) The California Law Revision Commission Comments, 54A pt. 1 West’s Annotated Probate Code (2011 ed.) following section 17004 explains: “A determination that a California court may exercise jurisdiction is not decisive if the exercise would be an undue interference with the jurisdiction of a court of another state which has primary supervision over the administration of the trust. [Citations.] This concept of primary supervision in the context of trust administration is a special application of the doctrine of forum non conveniens, which is recognized generally in Code of Civil Procedure Section 410.30.”

Danavon argues that because he is a resident of California, the court erred in dismissing his petition on the ground of lack of subject matter jurisdiction/forum non conveniens. In *Van Keulen v. Cathay Pacific Airways, Ltd.* (2008) 162 Cal.App.4th 122, 126, the court stated: “In California, the action of a non-California resident may be dismissed on forum non conveniens grounds, but, barring extraordinary circumstances, the action of a California resident may only be stayed. [Citation.] This is necessary so that the California court can “protect . . . the interests of the California resident pending the final decision of the foreign court.”” (See also *Archibald v. Cinerama Hotels* (1976) 15 Cal.3d 853, 858.)

Melba, Gary, and Lonna argue that although a plaintiff's California residency is a factor that is accorded substantial weight in the analysis, other factors may justify dismissal. To support their argument, they cite *Northrop Corp. v. American Motorists Ins. Co.* (1990) 220 Cal.App.3d 1553. *Northrop* is no longer good law. That case was decided under a temporary amendment to Code of Civil Procedure section 410.30, in effect between 1986 and 1992, which provided that "[t]he domicile or residence in this state or any party to the action shall not preclude the court from staying or dismissing the action." (See *Beckman v. Thompson* (1992) 4 Cal.App.4th 481, 487-488.) As the court in *Beckman* explained, the expiration of the temporary amendment by its own terms resulted in a return to previous law under which "ordinarily an action cannot be dismissed on the ground of inconvenient forum if the plaintiff is a California resident." (*Id.* at p. 488.)

"[E]xtraordinary circumstances" that might justify the dismissal of an action brought by a California resident include cases "in which California cannot provide an adequate forum or has no interest in doing so" as well as cases "in which the nominal California resident sues on behalf of foreign beneficiaries or creditors." (*Archibald v. Cinerama Hotels, supra*, 15 Cal.3d at p. 859, fns. omitted.) None of those circumstances exist in the present case. We conclude that although the trial court could appropriately have *stayed* the action, the trial court erred in *dismissing* the action on the basis of forum non conveniens.

B. Personal Jurisdiction

In her appeal, Melba argues the trial court erred in finding that the California court has personal jurisdiction over her, and lack of personal jurisdiction provides an alternate basis for affirming the dismissal.

We review the judgment itself, not the trial court's reasoning (*National Casualty Co. v. Sovereign General Ins. Services, Inc.* (2006) 137 Cal.App.4th 812, 818, fn. 6), and we affirm on any legal basis supported by the record regardless of the trial court's reasoning (*Sarale v. Pacific Gas & Electric Co.* (2010) 189 Cal.App.4th 225, 246).

1. Additional Background

In his petition, Danavon sought to suspend Melba's powers as cotrustee and to remove her as cotrustee; to remove Gary as a successor trustee; to appoint a California bank as temporary cotrustee and as successor trustee; and to order an accounting for all trust assets. The bases for the petition included the following allegations:

"20. [Danavon] is informed and believes that Melba is being unduly influenced by, at least, Lonna Gwen and Gary. As explained more thoroughly [*sic*] below, Melba has recently attempted to make very large, abnormal withdrawals from the Trust, and has been assisted every step of the way by Lonna Gwen, Gary, and/or an attorney who has admitted to being counsel for all three of them. [Danavon] is informed and believes that Melba is unable to resist Lonna Gwen and/or Gary's influence and is being used by Gary and/or Lonna Gwen to extract money from the DBH Trust and/or it[]s entities for the benefit of Lonna Gwen, Gary, and/or their own interests.

“21. [Danavon] is further informed and believes that Lonna Gwen and Gary have isolated Melba from her friends and part of her family, and attempted to drive a wedge between [Danavon] and Melba to undermine a previously loving mother-son relationship.

“22. [Danavon] is informed and believes that Lonna Gwen and/or Gary are pressuring or unduly influencing Melba into signing documents, including, but not limited to, powers of attorney which name one or both of them as agents.”

The remainder of the petition largely concerned Danavon’s attempts to obtain trust documents and records from various entities and individuals, including the Trust’s California accounting firm, and set forth examples of Gary’s and Lonna’s alleged actions to influence Melba.

At the hearing on the preliminary injunction, the trial court stated: “I don’t have a problem with the court having personal jurisdiction over Melba Horn. I think very clearly she has had long-standing business activities in California. This arises out of those long-standing business activities. She routinely communicates with an accountant, an attorney, a bookkeeper who work[s] in Riverside County, so it seems clear the Court has personal jurisdiction over her.” The trial court further stated: “[Probate Code section 17004] tells the Court that it has jurisdiction over persons on any basis that is not inconsistent with the United States Constitution. That’s why I pointed out that Melba Horn has had long-standing, significant contacts with not just the State of California, but Riverside County for many years. That’s why I think it is not a personal jurisdiction

issue. [¶] I think it is clear that the Court has personal jurisdiction as expressed in Probate Code Section 17004 over persons, including Melba Horn.”

In its order denying the preliminary injunction, the trial court stated that it “has personal jurisdiction over the parties because each of them has sufficient contacts with California such that they could reasonably anticipate being haled into court here.”

2. Standard of Review

We review the trial court’s factual determinations giving rise to personal jurisdiction under the substantial evidence standard. However, we independently review the trial court’s conclusions as to the legal significance of those facts. (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 449.)

3. Analysis

Probate Code section 17003 provides that, subject to constitutional limitations, an individual submits personally to the jurisdiction of California courts by accepting the trusteeship of a trust having its “principal place of administration” in California. The “principal place of administration” is defined as the usual place where day-to-day activity of the trust is carried on by the trustee or the trustee’s representative who is primarily responsible for the administration of the trust. (Prob. Code, § 17002.) The trial court made a factual finding that Texas is the principal place of administration of the Trust. That finding is supported by substantial evidence—Melba testified that she signs all Trust checks in Texas. Although the Trust uses California legal and accounting advisors, Melba’s communications with them take place by telephone or mail from her Texas

home. The Trust's certified public accountant regularly travels to Texas to meet with Melba in person. Thus, Probate Code section 17003 does not support personal jurisdiction over Melba.

Danavon argues that Melba's "substantial, continuous, and systematic" contacts with this state were sufficient to support general personal jurisdiction over her. In *Cornelison v. Chaney* (1976) 16 Cal.3d 143, our Supreme Court stated: "If a nonresident defendant's activities may be described as 'extensive or wide-ranging' [citation] or 'substantial . . . continuous and systematic' [citation], there is a constitutionally sufficient relationship to warrant jurisdiction for all causes of action asserted against him. In such circumstances, it is not necessary that the specific cause of action alleged be connected with the defendant's business relationship to the forum." (*Id.* at p. 147.) In *Cornelison*, our Supreme Court held that the following facts were insufficient to establish general jurisdiction: The defendant, a truck driver, was a resident of Nebraska who worked as an independent contractor hauling goods in interstate commerce. For seven years, he had made about 20 trips per year to California, and he was licensed by the California Public Utilities Commission as well as by regulatory agencies in other states. (*Id.* at pp. 146-147.) While en route to California to deliver freight and to pick up another load, he collided with a car in Nevada, killing the driver. The driver's wife, a California resident sued the defendant in California. The court concluded that the defendant's "activities in California [we]re not so substantial or wide-ranging as to justify general jurisdiction over him to adjudicate all matters regardless of their relevance to the cause of action alleged

by plaintiff.” (*Id.* at p. 148.) The court nonetheless held that it was proper to exercise limited jurisdiction over the defendant. (*Id.* at p. 152.)

Here, Melba had not set foot in California since at least 2007. Although the Trust owns extensive property in California, Melba’s activities administering the Trust took place in Texas. We conclude the record provides no basis for finding general jurisdiction over Melba.

We next examine whether limited jurisdiction was appropriate. The *Cornelison* court described limited jurisdiction as follows: “If, however, the defendant’s activities in the forum are not so pervasive as to justify the exercise of general jurisdiction over him, then jurisdiction depends upon the quality and nature of his activity in the forum in relation to the particular cause of action. In such a situation, the cause of action must arise out of an act done or transaction consummated in the forum, or defendant must perform some other act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws. Thus, as the relationship of the defendant with the state seeking to exercise jurisdiction over him grows more tenuous, the scope of jurisdiction also retracts, and fairness is assured by limiting the circumstances under which the plaintiff can compel him to appear and defend. The crucial inquiry concerns the character of defendant’s activity in the forum, whether the cause of action arises out of or has a substantial connection with that activity, and upon the balancing of the convenience of the parties and the interests of the state in assuming jurisdiction.” (*Cornelison v. Chaney, supra*, 16

Cal.3d at pp. 147-148, fn. omitted.) (See also *Snowney v. Harrah's Entertainment, Inc.* (2005) 35 Cal.4th 1054, 1062 [setting forth a three-pronged test under which “[a] court may exercise specific jurisdiction over a nonresident defendant only if: (1) “the defendant has purposefully availed himself or herself of forum benefits” [citation]; (2) “the ‘controversy is related to or “arises out of” [the] defendant’s contacts with the forum” [citation]; and (3) “the assertion of personal jurisdiction would comport with “fair play and substantial justice”” [citations].’ [Citation.]”

The trial court found limited rather than general jurisdiction over Melba on the basis of her long-standing business activities in California and her communications with California professionals. “Doing business is doing a series of similar acts for the purpose of thereby realizing pecuniary profit, or otherwise accomplishing an object, or doing a single act for such purpose with the intention of thereby initiating a series of such acts. [Citation.]. . . . The question in each case is whether an individual has a sufficient relationship to the state arising out of such business that makes it reasonable for the state to exercise judicial jurisdiction over the individual as to the particular cause of action. [Citation.]” (See Judicial Council of Cal., com., reprinted at 14A West’s Ann. Code Civ. Proc. (2004 ed.) foll. § 410.10, p. 379; see also *Martinez v. Perlite Institute, Inc.* (1975) 46 Cal.App.3d 393, 401.)

Danavon argues that his petition is substantially connected to Melba’s activities and conduct as a cotrustee of the Trust “where the vast majority of its assets are located in California.” However, based on the allegations of the petition, the gravamen of the

lawsuit was whether Melba is competent to continue as a cotrustee and whether Gary and Lonna have exercised undue influence over her. Thus, the petition concerns Melba's personal dignity and autonomy far more than it does the assets or business operations of the Trust. In this context, the location of Trust assets and the fact that Melba obtains services from professionals in California are, for the most part, irrelevant to any controverted issues. Melba's past lengthy domicile in California is likewise irrelevant. In *Owens v. Superior Court* (1959) 52 Cal.2d 822, 829, our Supreme Court explained: "[T]he mere fact of past domicile in the state would not subject [the defendant] to its jurisdiction indefinitely, for a past domicile having no relationship to the litigation at hand would not afford a reasonable basis for an assertion of jurisdiction."

Danavon asserts that Probate Code section 17004 provides a basis for jurisdiction. That section states: "The court may exercise jurisdiction in proceedings under this division on any basis permitted by Section 410.10 of the Code of Civil Procedure." (Prob. Code, § 17004.) Thus, Probate Code section 17004 does not expand the jurisdiction of the court beyond the limits of the Constitution. We have already determined, applying the principles discussed in *Cornelison*, that those constitutional limits do not permit exercise of personal jurisdiction over Melba under the circumstances of this case.

Danavon next relies on the choice of law provision in the Trust agreement to argue that "Melba . . . necessarily invoked the protections and benefits of California law by accepting the position of co-trustee of a trust agreement that explicitly provides that it is

governed by the laws of California.” However, as the trial court aptly pointed out: “Well, the Texas court can hear the case and apply California law. I mean, that’s the standard provision in lots of contracts and but that doesn’t change—determine the venue necessarily, but the trust didn’t say that any actions concerning this trust are to be heard in the California court, it doesn’t say that.” We agree with the trial court that the inclusion of a choice of law provision in a contract does not necessarily lead to personal jurisdiction over parties to the contract. (See, e.g., *People v. Betts* (2005) 34 Cal.4th 1039, 1053, fn. 7 [observing that in civil cases, “jurisdiction and choice of law are separate questions”].)

Finally, Danavon argues it is “fair and reasonable” for the California courts to exercise personal jurisdiction over Melba because, in addition to the factors discussed above, she lived in this state for more than 60 years, including from the time the Trust was created in 1974 until 1997, and in 2010 she entered into a contract for accounting services for the Trust. As discussed above, Melba’s past residency in California provides no basis for the current exercise of personal jurisdiction over her in California. She has long since become a resident of another state. (*Owens v. Superior Court, supra*, 52 Cal.2d at p. 829.) And while personal jurisdiction over an action based on a contract she entered into for accounting services might indeed be appropriate, this is not such an action.

We conclude the trial court erred in finding personal jurisdiction over Melba. We therefore affirm the trial court’s dismissal of the action, albeit on a different ground from

that which the trial court relied on. (*National Casualty Co. v. Sovereign General Ins. Services, Inc.*, *supra*, 137 Cal.App.4th at p. 818, fn. 6; *Sarale v. Pacific Gas & Electric Co.*, *supra*, 189 Cal.App.4th at p. 246.)

IV. DISPOSITION

The judgment is affirmed. Danavon shall pay costs to Melba. Gary and Lonna shall bear their own costs.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

HOLLENHORST

Acting P. J.

We concur:

KING

J.

CODRINGTON

J.